

16A Am. Jur. 2d Constitutional Law § 623

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Constitutional Law

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IX. Fundamental Constitutional Rights and Privileges

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b. Liberty Interest in Specific Matters

§ 623. Right to travel for purposes of liberty interest of Due Process Clause

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West's Key Number Digest

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The constitutional freedom to travel includes the freedom to enter and abide in any state in the Union.¹ However, the means or mode of traveling may be subjected to reasonable regulations.² While the freedom to travel within the United States has been held to be a basic right under the Federal Constitution which is independent of a specific provision therein,³ the right of locomotion has also been held to be a part of the "liberty" guaranteed by the Due Process Clause.⁴ The right to migrate protects residents of one state from being disadvantaged or from being treated differently, simply because of the timing of their migration, from other similarly situated residents. Laws which burden the right to migrate must be necessary to further a compelling state interest. In addition to protecting persons against the erection of actual barriers to interstate movement, the right to travel when applied to residency requirements protects new residents of a state from being disadvantaged because of their recent migration or from otherwise being treated differently from longer term residents.⁵ Thus, the Supreme Court has stated that the liberty secured by the Due Process Clause of the 14th Amendment consists, in part, in the right of a person to live and work where he or she will.⁶

State law implicates the constitutional right to travel when it actually deters such travel, when impeding travel is its primary objective, or when it uses any classification which it serves to penalize exercise of that right.⁷

The Supreme Court has accepted as constitutional the federal statute authorizing the incarceration of material witnesses in advance of trial.⁸ Similarly, the Uniform Act to Secure Attendance of Out-of-State Witnesses does not violate the 14th Amendment by unduly restricting a citizen's right to ingress and egress.⁹ Also, a state sex offender registration statute that prohibits higher-risk registered sex offenders from living within a specified distance of a school or daycare center does not infringe on a constitutional right to intrastate travel.¹⁰ A bona fide residence requirement of a state statute, which is

appropriately defined and uniformly applied with respect to attendance in free public schools, does not violate the Equal Protection Clause of the 14th Amendment, and does not burden or penalize the constitutional right of interstate travel.¹² However, a state's restriction of its civil service preference to veterans who entered the armed forces while residing in the state violates the constitutionally protected right to travel.¹³

Practice Tip:

The "strict scrutiny" standard of constitutional review applies where the violated interest is a fundamental personal right or civil liberty, such as the right to interstate travel.¹⁴

The Supreme Court has stated that the right to travel abroad is a part of the "liberty" of which a citizen cannot be deprived without due process of law.¹⁵ However, the constitutional liberty to travel abroad is subject to limitations.¹⁶ Thus, freedom to travel abroad with a "letter of introduction" in the form of a passport issued by the sovereign is subordinate to national security and foreign policy considerations and is, as such, subject to reasonable governmental regulation, inasmuch as the freedom to travel outside the United States is distinguishable from the right to travel within the United States.¹⁷

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Footnotes

¹ *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 106 S. Ct. 2317, 90 L. Ed. 2d 899 (1986).

The right of a United States citizen to travel from one state to another and to take up residence in the state of his or her choice is protected by the Federal Constitution. *Jones v. Helms*, 452 U.S. 412, 101 S. Ct. 2434, 69 L. Ed. 2d 118 (1981).

² *Benning v. State*, 161 Vt. 472, 641 A.2d 757 (1994) (a motorcycle headgear statute does not violate a state constitutional article guaranteeing the right of enjoying and defending liberty and pursuing and obtaining safety).

³ §§ 657, 658.

⁴ *U.S. v. Laub*, 385 U.S. 475, 87 S. Ct. 574, 17 L. Ed. 2d 526 (1967).

Even though one may not have a constitutional right to be in a certain place, the government may not prohibit one from going there unless by means consonant with due process of law. *Cafeteria and Restaurant Workers Union, Local 473, AFL-CIO v. McElroy*, 367 U.S. 886, 81 S. Ct. 1743, 6 L. Ed. 2d 1230 (1961).

As to freedom of travel or movement in public vehicles or places, see § 624.

⁵ *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 106 S. Ct. 2317, 90 L. Ed. 2d 899 (1986).

⁶ *Zobel v. Williams*, 457 U.S. 55, 102 S. Ct. 2309, 72 L. Ed. 2d 672 (1982) (holding that the retrospective aspect of Alaska's dividend distribution program, favoring established residents over new residents, was constitutionally unacceptable).

⁷ *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11, 25 S. Ct. 358, 49 L. Ed. 643 (1905); *Booth v. People of State of Illinois*, 184 U.S. 425, 22 S. Ct. 425, 46 L. Ed. 623 (1902); *Williams v. Fears*, 179 U.S. 270, 21 S. Ct. 128, 45 L. Ed. 186 (1900) (also stating that the right to move from one place to another according to inclination is an attribute of personal liberty).

⁸ *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 106 S. Ct. 2317, 90 L. Ed. 2d 899 (1986).

⁹ *Hurtado v. U.S.*, 410 U.S. 578, 93 S. Ct. 1157, 35 L. Ed. 2d 508 (1973).

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10 *People of State of N. Y. v. O'Neill*, 359 U.S. 1, 79 S. Ct. 564, 3 L. Ed. 2d 585 (1959).

11 *Weems v. Little Rock Police Dept.*, 453 F.3d 1010 (8th Cir. 2006).

An ordinance prohibiting convicted sex offenders from knowingly entering any public park owned, operated, or maintained by town did not violate the fundamental right to intrastate travel under the Federal and State Constitutions; the right to enter a park was not a right of function which a sex offender would depend on to carry out daily life activities, and the ordinance was rationally related to the town's interest in preventing sex crimes. *Standley v. Town of Woodfin*, 362 N.C. 328, 661 S.E.2d 728 (2008).

12 *Martinez v. Bynum*, 461 U.S. 321, 103 S. Ct. 1838, 75 L. Ed. 2d 879, 10 Ed. Law Rep. 11 (1983).

13 *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 106 S. Ct. 2317, 90 L. Ed. 2d 899 (1986).

14 *Cummings v. X-Ray Associates of New Mexico, P.C.*, 1996-NMSC-035, 121 N.M. 821, 918 P.2d 1321 (1996).

15 Am. Jur. 2d, Passports § 13.

As to the right with respect to international travel, generally, see § 661.

16 *Zemel v. Rusk*, 381 U.S. 1, 85 S. Ct. 1271, 14 L. Ed. 2d 179 (1965) (holding that the exercise, by the Secretary of State, of his or her authority to refuse to validate passports of United States citizens for travel to Cuba is constitutionally permissible); *Karpova v. Snow*, 402 F. Supp. 2d 459 (S.D. N.Y. 2005), *aff'd*, 497 F.3d 262 (2d Cir. 2007).

As to the validity of passport restrictions or requirements, generally, see Am. Jur. 2d, Passports §§ 11 to 16.

17 *Haig v. Agee*, 453 U.S. 280, 101 S. Ct. 2766, 69 L. Ed. 2d 640 (1981) (holding that the President, by acting through the Secretary of State, has authority to revoke a passport on the ground that the holder's activities in foreign countries are causing or are likely to cause serious damage to the national security or foreign policy of the United States).

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